

Supreme Court, U.S.
FILED
JUN 5 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1678

In The
Supreme Court of the United States

October Term, 1989

PARK AVENUE, LTD.,

Petitioner.

vs.

CITY OF DETROIT,
a Michigan Municipal Corporation,

Respondent.

BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI

CITY OF DETROIT LAW DEPARTMENT

By: FRANK W. JACKSON P23164

Of Counsel

Supervising Assistant Corporation Counsel

PERRY L. YUN P39446

DRAGAN STOJANOV P34936

Assistant Corporation Counsel

1010 City-County Building

Detroit, Michigan 48226

(313) 224-4550

Interstate Brief & Record Company, a division of North American Graphics, Inc.
1629 West Lafayette Boulevard, Detroit, MI 48216 (313) 962-6230

BEST AVAILABLE COPY

TABLE OF CONTENTS

	PAGE
Index of Authorities	ii
Concise Statement of Material Proceedings and Fact	1
The Reasons Why Certiorari Should Not Be Granted:	
I. CERTIORARI SHOULD BE DENIED BECAUSE PETITIONER'S CONSTITUTIONAL CLAIMS LACK MERIT.	2
II. CERTIORARI SHOULD ALSO BE DENIED BECAUSE THE ISSUE IS NOW MOOT.	4
Conclusion	5

INDEX OF AUTHORITIES

	PAGE
CASES:	
<i>City of Detroit v. Alsip</i> , 145 Mich App 794, 378 NW2d 603 (1985)	3
<i>City of Detroit v. Collateral Liquidation, Inc.</i> , 295 Mich 440, 295 NW 218 (1940)	2
<i>City of Detroit v. O'Connor</i> , 302 Mich 531, 5 NW2d 453 (1942)	3
<i>City of Detroit v. Safety Investment Corp.</i> , 288 Mich 511, 285 NW 42 (1939)	2
<i>Mullane v. Central Hanover Trust Co.</i> , 339 US 306 (1950)	3
STATUTES AND OTHER AUTHORITIES:	
<i>Detroit City Charter</i> , § 8-403	3
<i>General Property Tax Act</i> , MCL 211.61 <i>et seq.</i>	4

No. 89-1678

In The
Supreme Court of the United States

—♦—
October Term, 1989
—♦—

PARK AVENUE, LTD.,

Petitioner.

- vs -

**CITY OF DETROIT,
a Michigan Municipal Corporation.**

Respondent.

**BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI**

**CONCISE STATEMENT OF
MATERIAL PROCEEDINGS AND FACT**

In March, 1984, the City of Detroit commenced an action in Wayne County Circuit Court to foreclose its property tax liens against a vacant commercial building located at 521 Park, Detroit. The building was owned by "Park Avenue, Ltd.," a corporation, one of whose principal officers and stockholders is also an attorney, John J. Hughes, III, who has and continues to represent the corporation.

At the time the action was filed, the tax delinquency dated back to 1976 and amounted to nearly \$100,000.00. Petitioner did not deny the delinquency but claimed Respondent's notice and foreclosure procedure violated constitutional due process requirements.

At trial, Judge Michael J. Stacey specifically ruled that the City had provided reasonable, adequate notice and entered judgment for the City on February 16, 1986.

After Park Avenue, Ltd.'s motion for new trial was denied, it filed a Claim of Appeal on December 5, 1986.

The Michigan Court of Appeals dismissed the appeal on January 13, 1988 because of Park Avenue, Ltd.'s failure to file its brief on appeal despite numerous warnings from the Court over a ten-month period. The reasons cited by Petitioner for this neglect amounted to ignorance of the correct procedure and lack of money.

Four subsequent appeals were also denied. During the pendency of their numerous appeals, Petitioner refused to pay their 1985 Wayne County taxes on the subject property and lost the subject property to the State of Michigan.

By deed, the State of Michigan transferred the property to the City of Detroit on April 1, 1988.

THE REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

I.

CERTIORARI SHOULD BE DENIED BECAUSE PETITIONER'S CONSTITUTIONAL CLAIMS LACK MERIT.

The question of the constitutionality of the City of Detroit's tax foreclosure process has been considered three times by the Michigan Supreme Court. In *City of Detroit v. Safety Investment Corp.*, 288 Mich 511, 285 NW 42 (1939), the Court held the judicial foreclosure process to be valid and constitutional. Accord, *City of Detroit v. Collateral Liquidation, Inc.*, 295 Mich 440,

295 NW 218 (1940); *City of Detroit v. O'Connor*, 302 Mich 531, 5 NW2d 453 (1942). The Michigan Court of Appeals, more recently, has reiterated those holdings in *City of Detroit v. Alsip*, 145 Mich App 794, 378 NW2d 603 (1985).

The validity of the procedure employed by Respondent to foreclose its tax liens cannot be seriously questioned.

Petitioner argues that Respondent did not meet the notice and due process requirement of *Mullane v. Central Hanover Trust Co.*, 339 US 306 (1950).

City Charter § 8-403 requires that "reasonable notice" shall be given before the end of the City's fiscal year that the City's tax lien shall be deemed sold to the City's finance director. This was done by the following methods: as part of the tax bill and publishing in the newspaper.

Petitioner's contention that Respondent did not provide adequate notice of the tax foreclosures is, at best, frivolous. Mr. Hughes, both a principal officer of Petitioner and its attorney, in the prior stages of this litigation, has been licensed to practice law in Michigan for over twelve years and has also been a professional real estate investor and manager, as stated in his deposition.

For him to assert, as he did at trial, on appeal, and again here, that he had inadequate notice of the impending loss of property that was *seven years* tax delinquent simply insults this Court's intelligence. Petitioner has admitted owing the taxes at issue, over \$100,00.00. With no prospective purchaser on the horizon, how Petitioner could have hoped to save the property from foreclosure is beyond the scope of any reasonable imagination. In his deposition, Mr. Hughes admitted an awareness as early as 1980 of a serious tax

delinquency on the subject property. Yet he has suggested to this Court that the eventual commencement of Respondent's foreclosure action in 1984 allowed him insufficient time to sell the property.

II.

CERTIORARI SHOULD ALSO BE DENIED BECAUSE THE ISSUE IS NOW MOOT.

While Petitioner argued about whether the City provided adequate, reasonable notice, Petitioner did not pay the 1985 Wayne County taxes on the subject property and the State of Michigan, in an independent proceeding, foreclosed upon the property in accordance to the Michigan General Property Tax Act. MCL 211.61 *et seq.* On April 1, 1988, the State of Michigan deeded the subject property to the City of Detroit.

As Petitioner's interest in the property has been extinguished by the State of Michigan's foreclosure, the issue is now moot and Petitioner lacks standing.

CONCLUSION

The Respondent, City of Detroit, has followed the due process requirements of its real property tax foreclosure. Furthermore, as the property was foreclosed upon by the State of Michigan, the issue is now moot. Wherefore, Respondent prays that this Court deny Petitioner's petition for writ of certiorari.

Respectfully submitted,

CITY OF DETROIT LAW DEPARTMENT

By: /s/ FRANK W. JACKSON P23164

Of Counsel

Supervising Assistant Corporation Counsel

PERRY L. YUN P39446

DRAGAN STOJANOV P34936

Assistants Corporation Counsel

1010 City-County Building

Detroit, Michigan 48226

(313) 224-4550

Dated: June 5, 1990